

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

Appeal From Anderson County
Alexander S. Macaulay, Circuit Court Judge

Opinion No. 2014-UP-350

State of South Carolina,.....Respondent,

v.

Antonio Glover,.....Petitioner.

PETITION FOR REHEARING

Antonio Glover, #258670
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Pro Se

Other Counsel Of Record:

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ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	2.
STATEMENT OF ISSUES ON APPEAL	3.
STATEMENT OF THE CASE	4.
ARGUMENTS	5.
CONCLUSION	8.

TABLE OF AUTHORITIES

Cases

United States v. Burton, 228 F.3d 524 ().....

United States v. Foster, 634 F.3d 243(4th Cir.2011).....

State v. Gulledge, 287 S.E.2d 488(1982).....

State v. Robertson, 31 S.E. 868(1899).....

State v. Inman, Opinion No. 27402(S.Ct.June 18,2014).....

Constitutional Provisions

South Carolina Constitutional Article I, § 14.....

United States Constitutional Amendment IV.....

United States Constitutional Amendment VI.....

STATEMENT OF ISSUES ON APPEAL

I.

THE COURT OF APPEALS SHOULD HAVE HELD THAT PETITIONER WAS ILLEGALLY SEIZED AND SEARCHED IN VIOLATION OF HIS FOURTH AMENDMENT RIGHTS.

II.

THE COURT OF APPEALS SHOULD HAVE HELD THAT THE TRIAL COURT ERRED IN DENYING THE PETITIONER'S MOTION TO SUPPRESS BECAUSE PETITIONER WAS UNLAWFULLY DETAINED AND SEARCHED WITHOUT REASONABLE SUSPICION OR PROBABLE CAUSE.

III.

THE COURT OF APPEALS SHOULD HAVE HELD THAT THE PETITIONER WAS DENIED A FAIR TRIAL DUE TO THE TRIAL COURT'S FAILURE TO ADDRESS AND ENTERTAIN PETITIONER'S MOTION TO REMOVE JURORS FOR WITHHOLDING INFORMATION DURING VOIR DIRE.

STATEMENT OF THE CASE

On October 23, 2007, Antonio Glover was indicted in Anderson County for resisting arrest and trafficking crack cocaine pursuant to the S.C. Code §44-53-375(C)(1)(c). App. 320;327. On December 7, 2009, a suppression hearing was held before the Honorable J. Cordell Maddox, Jr. App.1. Charles Whiten represented Glover. App.1. Jennings Byford represented the State. App.1. On December 8, 2009, Judge Maddox issued an order denying Glover's suppression motion. App.51.

On March 29-30, 2010, Glover was tried before the Honorable R. Lawton McIntosh. App.53. Mr. Whiten represented Glover. App.53. Elizabeth H. Byford represented the State. App.53. The jury convicted Glover and Judge McIntosh sentenced him to 15 years' imprisonment on the trafficking crack cocaine conviction and one year for resisting arrest, to be served concurrently. App. 280, ll. 21-25.

On December 1, 2010, Glover filed a PCR application. App. 283. In his application, he alleged ineffective assistance of counsel for failing to properly file his appeal. On June 8, 2011, a hearing was held before the Honorable Alexander S. Macaulay. App.304. Glover was represented by James B. King. App. 304. The State was represented by Kaelon E. May and Salley Elliott. App. 304. At the hearing, the State conceded that counsel had failed to properly file Glover's appeal and consented to an appeal pursuant to White v. State. App. 307, ll. 10-13. On October 14, 2011, Judge Macaulay issued an order dismissing Glover's PCR application and granting him a belated appeal. App. 316.

On September 11, 2014, oral argument was held. On October 8, 2014, Petitioner's case was affirmed.

Petitioner now files this Petition for Rehearing, pursuant to Rule 221, SCACR.

ARGUMENT

1. The Appellate Court should have granted Petitioner relief because he was illegally seized and searched in violation of his Fourth Amendment Rights protections.

The evidence seized from Petitioner was obtained as a result of a violation of his Fourth Amendment rights because the police failed to have reasonable suspicion to stop or detain him and the subsequent arrest was unlawful.

The Appellate Court has overlooked and misapprehended the facts of the case. The officers failed to prove that they based their stop on a reasonable suspicion. This is a proven fact because the officers attempted to construct reasonable suspicion at the suppression hearing and trial. In which their testimony was different at each step of the way.

The fact that the Trial Court acknowledged that no probable cause existed and that the officers had several inconsistencies in their statements, shows that the Trial Court did not base his ruling on the facts presented at trial. Even though the Trial Court recognized and made a verbal notation of such. Therefore, the trial court abused his discretion when he denied the suppression motion.

The Appellate Court failed to consider these facts in making their ruling. The Appellate Court allowed the officers to make "post hoc rationalizations to validate the seizures that turned up the contraband" in this case. Which has been forbidden in this circuit. United States v. Foster, 634 F.3d. 243, 249 (4th Cir.2011).

The officers' actions clearly violated the Petitioner's rights against illegal search and seizure. As the Courts have stated in United States v. Burton, 228 F.3d 524 (). Burton was identical in facts and circumstances. However, the Supreme and Federal Courts ruled that the seizure and search of Burton was illegal. In which this Honorable Court must follow.

Clearly the arrest of Petitioner was illegal and made in violation of his constitutional rights. Petitioner attempted to leave the scene when he wasn't under arrest. Both officers clearly stated that Petitioner was not under arrest when he took flight.

However, the officers told the court that the Petitioner resisted arrest. How could this be so when there was never a lawful arrest? If Petitioner had not ran into the officer, what or how could the officers justify the search of his person? They cannot, thus, the evidence found is the product of fruit of the poisonous tree and cannot be admitted in court.

Moreover, the officers admitted that they could not tell if Petitioner was actually involved in any illegal activity. Nor do they say that they wanted to search Petitioner for weapons because of fear. Therefore, no exception to the Fourth Amendment exist.

For the above listed reasons, this petition for rehearing should be granted.

2. The Appellate Court should have granted Petitioner relief because the Trial Court erred in holding that the arrest of Petitioner was lawful.

Petitioner asserts that his arrest was unlawful. The Appellate Court has overlooked and misapprehended the fact that the officers clearly conceded that Petitioner was never under arrest prior to his attempt to flee. Accidental contact with the officer does not justify a lawful arrest. The officers displayed ignorance of their knowledge of law, because they admit that the arrest was unlawful by their actions in charging Petitioner with resisting arrest, when they state the Petitioner was "never under arrest. Their statements and actions constitute the precise definition of a oxymoron, because how can the Respondent argue both (1) the Petitioner was not under arrest and (2) that the Petitioner resisted arrest.

The Supreme Court and Federal Court have supported Petitioner's allegation in United States v. Burton, 228 F.3d 524().

Therefore, Petitioner argues that the Appellate Court overlooked the fact that the officers admitted that they never

placed the Petitioner under arrest. Which is a perquisite of resisting arrest. Without it, the arrest of Petitioner was unlawful. See Burton.

3. The Appellate Court should have granted Petitioner relief due to the Trial Court failing to grant his motion to remove jurors for withholding information during voir dire.

The Appellate Court overlooked the fact that the Petitioner was denied a fair trial. In such, Petitioner was denied a fundamental right to trial by a impartial jury, because to jurors withheld information during voir dire. Petitioner's trial counsel motioned the court for removal of theses jurors once their deceit came to light. However, the Trial Court failed to grant the motion. The Appellate Court overlooked the fact that the motion was raised immediately after the facts came to light. However, the Appellate Court states that the motion was not timely raised. There is nothing that could be done about the jurors prior to the deceit being identified.

It is a fundamental right for a defendant is entitled to a trial by a impartial juror. State v. Gullledge, 287 S.E.2d 488,489(1982), citing the Sixth Amendment of the U.S. Constitution and Article I, Sect. 14, of Constitution:

"Every fair-minded person will readily recognize the importance of having the jury to whom a case is submitted for trial composed of persons who, as far as practicable, are free from any bias or prejudice, either for a against one or the other of the parties, whether the same arises from interest, by reason of relationship or otherwise, or from having previously formed or expressed an opinion as to the merits of the controversy."

State v. Robertson, 31 S.E. 868(1899).

The Trial Court's failure to make an inquiry into the basis

placed the Petitioner under arrest. Which is a perquisite of
Resisting a Peace Officer.

was the only way to ensure that the Petitioner was provided a fair trial. As you know, the Constitution trumps any statutory law that collides with it. State v. Woods, 550 S.E.2d 282, 284(2001), lays the proper formula to address these types of allegations, all in an attempt to provide a defendant with a fair trial. An accused is guaranteed a fair trial, not a perfect trial. The actions of the Trial Court's failure to question the jurors, violates the Petitioner's right to a fair trial. Which is secured through the U.S. Constitutional Amendments Six and Fourteen and S.C. Constitutional Article 1, Section 14.

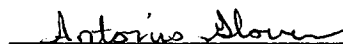
A inquiry into why the jurors deceived the court was necessary as the "only" way to provide a fair trial to Petitioner. This error on behalf of the Trial Court is a fundamental error, because it is the foundation of Petitioner's fundamental right to trial. At a minimum, in the abundance of caution, the Trial Court was required to question the jurors and or remove them and replace them with the alternate jurors. "The proper remedy in such cases is the granting of a new trial." State v. Inman, Op.No. 27402, June 18, 2014). See also, Ford, 512 S.E.2d @ 504.

The Appellate Court should have granted relief on this issue.

CONCLUSION

For these above stated reasons, Petitioner's rehearing should be granted.

Respectfully submitted,



Antonio Glover

Pro Se

October 21, 2014

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

Appeal From Anderson County
Alexander Macaulay, Circuit Court Judge

Antonio Glover,

Petitioner,

vs.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the "Petition for Rehearing" has been served upon the below listed, by placing such in the U.S.Mail via Livesay Corr. Inst. legal mail system, on October 21,2014

THE FOLLOWING HAVE BEEN SERVED:

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October 21,2014
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